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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ANTHONY LEON JOHNSON,

14 Defendant.  
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Case No. 1:03-CR-5053 AWI 1

**STIPULATED MOTION AND [lodged] ORDER  
TO REDUCE SENTENCE PURSUANT TO  
SECTION 404 OF THE FIRST STEP ACT, P.L.  
115-391**

Judge: Honorable ANTHONY W. ISHII

16 Defendant, ANTHONY LEON JOHNSON, by and through his attorney, Assistant  
17 Federal Defender David M. Porter, and plaintiff, UNITED STATES OF AMERICA, by and  
18 through its counsel, Assistant U.S. Attorney Jason Hitt, hereby stipulate that the Court should  
19 enter an amended judgment reducing Mr. Johnson's sentence to 173 months. The parties further  
20 stipulate as follows:

21 1. In 2004, defendant was convicted of conspiracy to distribute 119.7 grams of crack  
22 cocaine (Count 1), and distribution of 43.6 grams of crack cocaine (Counts 2 and 3). (PSR ¶ 18).  
23 In its calculation of the applicable guideline range, the PSR concluded defendant was a career  
24 offender (PSR ¶ 22), subject to a guideline range of 262 to 327 months. (PSR ¶ 76.) Because  
25 the statutory maximum penalty for the offense of conviction was life (PSR ¶ 76), the base  
26 offense level under USSG § 4B1.1 was 37. (PSR ¶ 22.)

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1           2.       Defendant was initially sentenced to a term of 262 months. (Dkt. 34.) The Ninth  
2 Circuit Court of Appeals remanded the case, however, for resentencing pursuant to *United States*  
3 *v. Ameline*, 409 F.2d 1073 (9th Cir. 2005) (en banc). (Dkt. 46.)

4           3.       In 2006, defendant was sentenced to a term of 240 months.

5           4.       On December 21, 2018, the First Step Act was enacted. First Step Act of 2018, S.  
6 756, Pub. Law 115-391. Section 404 of the Act states that the sentencing court may, upon  
7 motion of the defendant, an attorney for the government, or the court, “impose a reduced  
8 sentence as if section 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the  
9 covered offense was committed.”

10          5.       The parties agree that defendant is eligible for a reduction of his sentence under  
11 Section 404. Specifically, had sections 2 and 3 of the Fair Sentencing Act of 2010 been in effect  
12 at the time the offense was committed, defendant would have been subject to a “term of  
13 imprisonment which may not be less than 5 years and not more than 40 years.” 21 U.S.C.  
14 § 841(b)(1)(B) (2010). Because the statutory penalty for the offense of conviction involving “28  
15 grams or more of a mixture or substance . . . which contains cocaine base” is 40 years, the base  
16 offense level under USSG § 4B1.1 is 34, resulting (after a three-level reduction for acceptance of  
17 responsibility, USSG § 3E1.1) in a guideline range of 188 to 235 months. USSG Ch. 5, Pt. A. A  
18 reduction comparable to the one received at resentencing would result in a sentence of 173  
19 months.

20          6.       Accordingly, the parties request this Court issue the order lodged herewith  
21 reducing Mr. Johnson’s sentence to 173 months on all counts to run concurrently, all other terms  
22 of the judgment remaining unchanged.

23          7.       The undersigned counsel for defendant affirms that he has discussed this  
24 stipulation with defendant and that defendant has authorized counsel to enter into this agreement  
25 on his behalf. The undersigned counsel also affirms that, so long as the Court accepts this  
26 stipulation, defendant waives his right to be present when the Court reduces his sentence, to any  
27 hearing, and to any findings to which he might be entitled. The defendant has so indicated, and  
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counsel joins in that waiver.  
  
Respectfully submitted,  
  
Dated: February 13, 2019  
  
McGREGOR SCOTT  
United States Attorney  
  
/s/ Jason Hitt  
JASON HITT  
Assistant U.S. Attorney  
  
Attorney for Plaintiff  
UNITED STATES OF AMERICA

Dated: February 13, 2019  
  
HEATHER E. WILLIAMS  
Federal Defender  
  
/s/ David M. Porter  
DAVID M. PORTER  
Assistant Federal Defender  
  
Attorney for Defendant  
ANTHONY LEON JOHNSON

1 **ORDER**

2 This matter came before the Court on the stipulated motion of the defendant for reduction  
3 of sentence pursuant to the First Step Act, P.L. 115-391.

4 The parties agree, and the Court finds, that Mr. Johnson is entitled to the benefit of  
5 Section 404 of the First Step Act, resulting in an amended guideline range of 188 to 235 months.  
6 A reduction comparable to the one received at the initial sentencing produces a sentence of 173  
7 months.

8 IT IS HEREBY ORDERED that the term of imprisonment imposed in December 2006 is  
9 reduced to a term of 173 months on all counts to be served concurrently.

10 IT IS FURTHER ORDERED that all other terms and provisions of the original judgment  
11 remain in effect. The clerk shall forthwith prepare an amended judgment reflecting the above  
12 reduction in sentence, and shall serve certified copies of the amended judgment on the United  
13 States Bureau of Prisons and the United States Probation Office.

14 Unless otherwise ordered, Mr. Johnson shall report to the United States Probation Office  
15 within seventy-two hours after his release.

16 Defendant's pro se motion filed January 7, 2019 (Dkt. 132) and the motion filed February  
17 12, 2019 (Dkt. 134) are dismissed as moot.

18 The February 28, 2019, hearing date is VACATED.

19 IT IS SO ORDERED.

20 Dated: February 14, 2019

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22 SENIOR DISTRICT JUDGE  
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